

APPEAL NO. 032460
FILED OCTOBER 29, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 25, 2003. The hearing officer determined that the respondent (claimant herein) suffered a compensable injury on _____, and that the claimant had disability from March 19, 2003, continuing through the date of the CCH. The appellant (carrier herein) files a request for review, contending that the claimant did not prove her injury was compensable because her testimony was not credible and that the claimant failed to prove she had disability. The carrier also argues that the hearing officer erred in not admitting photographs it offered into evidence to rebut the claimant's testimony. The claimant responds that the evidence supported the decision of the hearing officer and that the hearing officer did not err by refusing to admit exhibits that had not been timely exchanged.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must show that the admission or exclusion was an abuse of discretion and that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 992078, decided November 5, 1999; *see also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). The hearing officer's exclusion of the carrier's exhibits was based upon the fact they were not timely exchanged, which is clearly a guiding principle. The carrier argues that the photographs it sought to admit were offered for the purpose of rebutting the claimant's testimony and should have been admitted as rebuttal evidence. We have said that there is no blanket exception to the exchange rules for rebuttal evidence. *See Texas Workers' Compensation Commission Appeal No. 972029*, decided November 19, 1997; *Texas Workers' Compensation Commission Appeal No. 992384*, decided December 13, 1999. Thus, we find no error in the hearing officer's exclusion of the photographs.

There was conflicting evidence presented on the disputed issues of injury and disability. The issues of injury and disability are questions of fact. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. *Garza v. Commercial Insurance*

Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no basis to reverse the hearing officer's resolution of the injury or disability issues.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS POLITICAL SUBDIVISIONS JOINT SELF-INSURANCE FUNDS** and the name and address of its registered agent for service of process is

**TIM OFFENBERGER
12720 HILLCREST, SUITE 100
DALLAS, TEXAS 75230.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge